

Twenty Basic Rules for Personnel Leaving DOD

These “20 Basic Rules” are a revision of the “21 Basic Rules” published last year by Alan E. Sommerfeld, Counsel, Joint National Test Facility, Ballistic Missile Defense Organization. The new rules reflect the changes made by implementation of the 1996 amendments to the Procurement Integrity Act, effective January 1, 1997.

(The following 20 rules assume you are currently working for DOD and plan to seek employment with a non-Federal entity. Many of the rules were derived from the “200 Rules on Outside Income, Job Hunting and Post-Government Employment” by Major Mark Stone, a US Air Force Judge Advocate. The categories of personnel to whom each rule applies and its statutory/regulatory authority appear at the end of each rule. To ease your transition into the private sector, the attachments provide sample formats for accomplishing many of the necessary actions. The rules are current as of 1 January 1997. If you retired/separated before 1 January 1997, previous Procurement Integrity rules may apply to your situation. Check with your Ethics Counselor for advice on the old rules or on any of the rules listed below which need amplification.)

Restrictions on Seeking Employment

Rule 1: You are prohibited from *taking action* in your official capacity concerning a person or company that has a financial interest in a matter in which you are participating while you are negotiating with that person or company. The financial interests of your spouse, your minor child, or your partner may also trigger this prohibition. [Title 18, United States Code (U.S.C.), Section 208(a) - Officers and Civilians] [Joint Ethics Regulation (JER), DOD 5500.7-R, paragraphs 8-200 to 8-201 - Officers, Enlisted and Civilians]

Rule 2: While you are participating in a matter which has a direct and predictable effect on the financial interest of a person or company, you are prohibited from *seeking employment* (including pre-negotiation activity) with that person or company. [5 Code of Federal Regulations (C.F.R.) 2635.601 thru 2635.604; JER 2-204c & d - Officers, Enlisted and Civilians]

Comment: The first rule is statutory; the second is regulatory and expands the prohibition to cover any form of seeking employment. If you want to seek a job with a specific company, you must determine if any official action you could take would have a direct and predictable effect on the person or company’s financial interests. If you are participating in a matter affecting the company, you must provide a *written* memorandum to your supervisor stating that you are disqualified from future participation in the matter. (See Atch 1 for sample 208 disqualification memorandum.) Written disqualification is required before sending resumes or engaging in “informal” discussions with specific companies. Disqualification is not required before discussing opportunities with a “headhunter” as long as the identity of the potential employer(s) is not disclosed to you. If you are not participating in any matters affecting the company, no disqualification is required.

Rule 3: If you are participating personally and substantially in a procurement for a contract in excess of the simplified acquisition threshold (currently \$100,000; \$200,000 for contingency operations), **you must promptly report in writing *any contact with a bidder/offeror in that procurement concerning non-Federal employment and you must either reject the possible employment* (Atch 2) or *disqualify yourself from further participation in the procurement* (Atch 3).** Procurement Integrity [41 U.S.C. 423(c); FAR 3.104-4(c) and 3.104-6; JER 8-300 and 8-301 - Officers, Enlisted and Civilians]

Comment: If you are participating personally and substantially in drafting a solicitation (including the Statement of Work/Specification) or selecting a contractor in a contract that has not yet been awarded, you may not try to get a job with any company that is competing or is reasonably likely to compete for the contract until the contract is awarded, until the procurement is canceled, or until you have disqualified yourself from the procurement. Check with your Ethics Counselor concerning the meaning of personal and substantial participation and any changes in the simplified acquisition thresholds. See Rule 14 for the effect of past participation in the procurement on your ability to work for the bidder/offeror.

Rule 4: You are prohibited from communicating inside information to prospective employers. [5 C.F.R. 2635.703; JER 8-400b - Officers, Enlisted and Civilians] **This includes the unauthorized disclosing of any contractor bid or proposal information or source selection information.** [41 U.S.C. 423; FAR 3.104-4 and 3.104-5 - Officers, Enlisted and Civilians]

Rule 5: Once you have a job, you may not participate in any matter that affects the financial interests of the company with whom you have the employment arrangement. [18 U.S.C. 208(a) - Officers and Civilians] [5 C.F.R. 2635.606; JER 5-300 thru 5-303 - Officers, Enlisted and Civilian]

Rule 6: You may not use Government resources (except for authorized transition assistance benefits) in job hunting. [5 C.F.R. 2635.704 and JER 2-301 (equipment and telephones); 5 C.F.R. 2635.705 (time); 5 C.F.R. 2635.203(b)(7) (frequent flyer miles); 31 U.S.C. 1344 (vehicles); DOD Manual 4525.8 (postage); and 10 U.S.C. 892 (credit cards) - Officers, Enlisted and Civilians]

Comment: Some minor relaxation of this rule may occur in the case of a Federal Government downsizing, e.g. JER 2-301a(2) permits use of Government communications systems (telephone and computers) for job-searching if done on personal time, does not burden the communications system, etc. In addition, certain military members may use permissive TDY for seeking employment and finding new residences.

Rule 7: Even though a prospective employer is a Government contractor or other “prohibited source,” you may accept meals, lodging, transportation and other benefits normally provided by the prospective employer in connection with bona fide employment discussions. [5 C.F.R. 2635.204(e)(3) - Officers, Enlisted and Civilians]

Comment: To avoid a violation of the rules prohibiting your acceptance of gratuities from a prohibited source, make certain the prospective employer provides the same job interview travel benefits to all potential candidates for the same or similar positions.

Rule 8: You may obtain a letter of recommendation from other Government employees on official letterhead if (1) the letter is based on the employee’s personal knowledge of your ability or character and (2) either (a) the employee has dealt with you in the course of his/her Government employment or (b) you are applying for Federal employment. [5 C.F.R. 2635.702(b) - Officers, Enlisted and Civilians] **You may obtain a letter of recommendation from a DOD contractor employee as long as you do not use your Government position to coerce or induce the person to write the letter.** [5 C.F.R. 2635.702(a) - Officers, Enlisted and Civilians]

Rule 9: While still employed by DOD, you are prohibited from acting as a representative for anyone, including your new employer, before any Federal agency. [18 U.S.C. 205; JER 5-403 - Officers and Civilians]

Rule 10: While on terminal leave, you remain a Government employee and all of the above rules still apply.

Comment: Most Agencies/Agency Designees have implemented the requirement in JER 2-303 which requires you to file a request for off-duty employment before working during terminal leave (AF Form 3902 or equivalent/Atch 2).

Restrictions on Post-Government Employment

Rule 11: You face a lifetime ban on attempting to influence Federal officials (except Members of Congress and their legislative staffs) on behalf of someone regarding a matter on which you participated personally and substantially as a Government employee. [18 U.S.C. 207(a)(1); JER 9-300 and 9-400 - Officers and Civilians]

Comment: A “matter” for most Government employees means a particular Government contract. The lifetime ban therefore normally exists only as long as the specific contract in which the employee participated is still in existence.

Rule 12: You face a 2-year ban on attempting to influence Federal officials (except Members of Congress and their legislative staffs) on behalf of someone regarding a matter that was under your official responsibility during your last year of Government service. [18 U.S.C. 207(a)(2); JER 9-300 and 9-400 - Officers and Civilians]

Comment: A matter is under your “official responsibility” if you have the power, either directly or through a subordinate, to approve, disapprove or otherwise direct a Government action.

Rule 13: You face a 1-year ban on representing, aiding, or advising “the other side” (i.e., any other person except the United States) in trade or treaty negotiations in which you participated personally and substantially during your last year of government service. [18 U.S.C. 207(b) - Officers and Civilians]

Rule 14: You are prohibited from accepting compensation from a contractor for a period of 1 year after you:
a. Served as a procuring contracting officer, source selection authority, member of a source selection evaluation board, or chief of a financial or technical team in a procurement for a contract in excess of \$10M;
b. Served as the program manager, deputy program manager, or administrative contracting officer for a contract in excess of \$10M awarded to that contractor;
c. Personally made a decision to award a contract, a subcontract, a modification of a contract or subcontract, a task order, or a delivery order, in excess of \$10M;

d. Personally made a decision to establish overhead or other rates applicable to a contract or contracts for that contractor that are valued in excess of \$10M;

e. Personally made a decision to approve issuance of a contract payment or payments in excess of \$10M to that contractor; or

f. Personally made a decision to pay or settle a claim in excess of \$10M with that contractor.

HOWEVER, the above rule does not apply to compensation from any division or affiliate of the contractor that does not produce the same or similar products or services as the entity for which you took any of the actions listed above. Procurement Integrity [41 U.S.C. 423(d); FAR 3.104-4(d); JER 9-600 - Officers, Enlisted and Civilians]

Comment: You can still go to work for the contractor if you work for a division or affiliate that does not produce similar products or services. Or you can wait for the 1-year period to expire and go to work for the contractor in any capacity. Rules for calculating the 1-year period of prohibition are at FAR 3.104-8. Check with your Ethic Counselor to determine which prohibitions may apply to you and how to calculate the waiting period for those activities. You may request a procurement integrity ethics advisory opinion if you do not know whether you would be precluded by 41 U.S.C. 423(d) from accepting compensation *from a particular contractor*. (Atch 5).

Rule 15: You are prohibited from converting to your use or the use of another any government records or thing of value. This includes “inside information” obtained while in government service. [18 U.S.C. 641 - Officers, Enlisted and Civilians] **The specific prohibition against disclosing contractor bid or proposal information or source selection information also continues after you leave Federal employment.** [41 U.S.C. 423; FAR 3.104-4(a) and 3.104-5 - Officers, Enlisted and Civilians]

Comment: Inside information is any information not available to the general public which you obtained by reason of your official DOD duties.

Rules Relating to Work for Foreign Employers

Rule 16: You may not work for a foreign government or for a corporation or institution owned or controlled by a foreign government *without prior approval*. [37 U.S.C. 908; JER 9-701 - Retired Officers and Retired Enlisted]

Rule 17: You must register as a agent of a foreign principal if you wish to represent certain foreign activities in the U.S. Foreign Agents Registration Act [22 U.S.C. 611-621; 28 C.F.R. Part 5; JER 9-701c - Officers, Enlisted and Civilians]

Additional Rules for Senior Officials

Rule 18: You must file a final Standard Form 278 within 30 days after, but not earlier than 15 days before, the date of termination of your Federal employment (i.e. the end of your terminal leave). [5 U.S.C. App. 6, §§ 101-111; JER 7-200 to 7-209 - O-7 & above, SES employees]

Rule 19: You are prohibited from attempting to influence your former DOD component (i.e. Air Force, Army, Navy, DLA, etc.) regarding any official action for a period of 1 year (frequently called the “1-year no contact” rule). If your last job is at the DOD level, the restriction applies to attempts to influence DOD level organizations (e.g. defense agencies) rather than your component. [18 U.S.C. 207(c); 5 C.F.R. Part 2641; JER 9-300 - O-7 & above, SES-5 & above]

Rule 20: You are prohibited, within 1 year of leaving your government position, from representing, aiding or advising a foreign entity with the intent to influence a US government decision. [18 U.S.C. 207(f); JER 9-300 - O-7 & above, and SES-5 and above]

Remember to seek advice from your Ethics Counselor. These rules highlight the primary areas of interest to most departing personnel; however, any areas of concern should be discussed in detail with your Ethics Counselor.